

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

TROPICANA PRODUCTS, INC.,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 02-358 JJF
	:	
LAND O'LAKES, INC.,	:	
	:	
Defendant.	:	

Richard D. Kirk, Esquire of MORRIS, JAMES, HITCHENS & WILLIAMS
LLP, Wilmington, Delaware.

Of Counsel: Ethan Horwitz, Ira Jay Levy, and Adam B. Michaels,
Esquires of GOODWIN PROCTER LLP, New York, New York.

Attorneys for Plaintiff

Barry M. Klayman, Esquire of WOLF, BLOCK, SCHORR and SOLIS-COHEN
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Attorneys for Defendant

MEMORANDUM OPINION

November 20, 2003

Wilmington, Delaware

Farnan, District Judge.

By Memorandum Opinion and Order dated October 7, 2003 (D.I. 158, 159), I granted Plaintiff, Tropicana Products, Inc.'s ("Tropicana") Motion For Summary Judgment of Non-Infringement. In the Memorandum Opinion, I advised the parties that I had drafted a "tentative" decision on Tropicana's unenforceability claim and wanted their views on whether the matter had been mooted by the non-infringement decision.

Tropicana responded to my request that it believed I should enter a Final Order announcing my decision on unenforceability and dismissing without prejudice, as moot, the declaratory judgment invalidity claim. (D.I. 161 at 2.) Tropicana cited several reasons including that Tropicana and its related companies market many beverage products, and Tropicana should know whether the patent in suit needs to be considered in future packaging decisions.

Land O'Lakes, Inc. ("Land O'Lakes") responded that it does not intend to appeal the non-infringement issue. Further, Land O'Lakes advised that it unconditionally agrees not to sue Tropicana for infringement as to any claim of U.S. Design Patent No. Des. 428,813 based upon products currently manufactured and sold by Tropicana. (D.I. 162 at 2.) Land O'Lakes believes that its decision not to appeal combined with its covenant not to sue moots the unenforceability motion and any actual controversy

between the parties.

I conclude, in the circumstances of this case, that a Final Judgment of non-infringement should be entered, and, the remaining claims should be declared moot and dismissed. This approach will conserve the parties' resources and avoid the consideration of the enforceability of a patent that is not infringed by any of Tropicana's products.

A Final Judgment Order will be entered as described above.

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JUDGMENT IN A CIVIL CASE

For the reasons stated in the Court's Memorandum Opinion
issued on November 20th, 2003;

IT IS ORDERED AND ADJUDGED that:

1) Judgment be and is hereby entered in favor of Plaintiff
Tropicana Products, Inc. ("Tropicana"), on Noninfringement (D.I.
63);

2) Tropicana's Motion for Summary Judgment of Patent
Enforceability (D.I. 136) is **DENIED** as moot.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE

Dated: November 20, 2003

DEBORAH L. KRETT
(By) Deputy Clerk